



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB4090

by Rep. Anna Moeller

#### SYNOPSIS AS INTRODUCED:

740 ILCS 110/11	from Ch. 91 1/2, par. 811
740 ILCS 110/12.1	from Ch. 91 1/2, par. 812.1
740 ILCS 110/12.2	from Ch. 91 1/2, par. 812.2

Amends the Mental Health and Developmental Disabilities Confidentiality Act. Provides that records may be disclosed to law enforcement agencies in connection with the investigation or recovery of a person who has left a mental health or developmental disability facility or the custody of the Department of Human Services without being duly discharged or being free to do so. Provides that an employee of the Department of Human Services may disclose specified information to the appropriate law enforcement and investigating agencies. In a Section concerning the escape of a recipient, changes references to "facility" to "custody of the Department of Human Services". Makes other changes. Effective immediately.

LRB099 09924 HEP 30140 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Mental Health and Developmental  
5 Disabilities Confidentiality Act is amended by changing  
6 Sections 11, 12.1, and 12.2 as follows:

7 (740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

8 Sec. 11. Disclosure of records and communications. Records  
9 and communications may be disclosed:

10 (i) in accordance with the provisions of the Abused and  
11 Neglected Child Reporting Act, subsection (u) of Section 5  
12 of the Children and Family Services Act, or Section 7.4 of  
13 the Child Care Act of 1969;

14 (ii) when, and to the extent, a therapist, in his or  
15 her sole discretion, determines that disclosure is  
16 necessary to initiate or continue civil commitment or  
17 involuntary treatment proceedings under the laws of this  
18 State or to otherwise protect the recipient or other person  
19 against a clear, imminent risk of serious physical or  
20 mental injury or disease or death being inflicted upon the  
21 recipient or by the recipient on himself or another;

22 (iii) when, and to the extent disclosure is, in the  
23 sole discretion of the therapist, necessary to the

1 provision of emergency medical care to a recipient who is  
2 unable to assert or waive his or her rights hereunder;

3 (iv) when disclosure is necessary to collect sums or  
4 receive third party payment representing charges for  
5 mental health or developmental disabilities services  
6 provided by a therapist or agency to a recipient under  
7 Chapter V of the Mental Health and Developmental  
8 Disabilities Code or to transfer debts under the  
9 Uncollected State Claims Act; however, disclosure shall be  
10 limited to information needed to pursue collection, and the  
11 information so disclosed shall not be used for any other  
12 purposes nor shall it be redisclosed except in connection  
13 with collection activities;

14 (v) when requested by a family member, the Department  
15 of Human Services may assist in the location of the  
16 interment site of a deceased recipient who is interred in a  
17 cemetery established under Section 26 of the Mental Health  
18 and Developmental Disabilities Administrative Act;

19 (vi) in judicial proceedings under Article VIII of  
20 Chapter III and Article V of Chapter IV of the Mental  
21 Health and Developmental Disabilities Code and proceedings  
22 and investigations preliminary thereto, to the State's  
23 Attorney for the county or residence of a person who is the  
24 subject of such proceedings, or in which the person is  
25 found, or in which the facility is located, to the attorney  
26 representing the petitioner in the judicial proceedings,

1 to the attorney representing the recipient in the judicial  
2 proceedings, to any person or agency providing mental  
3 health services that are the subject of the proceedings and  
4 to that person's or agency's attorney, to any court  
5 personnel, including but not limited to judges and circuit  
6 court clerks, and to a guardian ad litem if one has been  
7 appointed by the court. Information disclosed under this  
8 subsection shall not be utilized for any other purpose nor  
9 be redisclosed except in connection with the proceedings or  
10 investigations. Copies of any records provided to counsel  
11 for a petitioner shall be deleted or destroyed at the end  
12 of the proceedings and counsel for petitioner shall certify  
13 to the court in writing that he or she has done so. At the  
14 request of a recipient or his or her counsel, the court  
15 shall issue a protective order insuring the  
16 confidentiality of any records or communications provided  
17 to counsel for a petitioner;

18 (vii) when, and to the extent disclosure is necessary  
19 to comply with the requirements of the Census Bureau in  
20 taking the federal Decennial Census;

21 (viii) when, and to the extent, in the therapist's sole  
22 discretion, disclosure is necessary to warn or protect a  
23 specific individual against whom a recipient has made a  
24 specific threat of violence where there exists a  
25 therapist-recipient relationship or a special  
26 recipient-individual relationship;

1 (ix) in accordance with the Sex Offender Registration  
2 Act;

3 (x) in accordance with the Rights of Crime Victims and  
4 Witnesses Act;

5 (xi) in accordance with Section 6 of the Abused and  
6 Neglected Long Term Care Facility Residents Reporting Act;

7 (xii) in accordance with Section 55 of the Abuse of  
8 Adults with Disabilities Intervention Act; ~~and~~

9 (xiii) to an HIE as specifically allowed under this Act  
10 for HIE purposes and in accordance with any applicable  
11 requirements of the HIE; and -

12 (xiv) to a law enforcement agency in connection with  
13 the investigation or recovery of a person who has left a  
14 mental health or developmental disability facility as  
15 defined in Section 1-107 or 1-114 of the Mental Health and  
16 Developmental Disabilities Code or the custody of the  
17 Department of Human Services without being duly discharged  
18 or being free to do so.

19 Any person, institution, or agency, under this Act,  
20 participating in good faith in the making of a report under the  
21 Abused and Neglected Child Reporting Act or in the disclosure  
22 of records and communications under this Section, shall have  
23 immunity from any liability, civil, criminal or otherwise, that  
24 might result by reason of such action. For the purpose of any  
25 proceeding, civil or criminal, arising out of a report or  
26 disclosure under this Section, the good faith of any person,

1 institution, or agency so reporting or disclosing shall be  
2 presumed.

3 (Source: P.A. 97-333, eff. 8-12-11; 97-375, eff. 8-15-11;  
4 98-378, eff. 8-16-13.)

5 (740 ILCS 110/12.1) (from Ch. 91 1/2, par. 812.1)

6 Sec. 12.1. A facility director or Department of Human  
7 Services employee who has reason to believe that a violation of  
8 criminal law or other serious incident has occurred within a  
9 mental health or developmental disability facility or while  
10 transporting a patient to or from a mental health or  
11 developmental disability facility shall report that violation  
12 or incident and the identity of individuals with personal  
13 knowledge of the facts related to the violation or incident to  
14 the appropriate law enforcement and investigating agencies.

15 In the course of any investigation conducted pursuant to a  
16 report made under this Section, any person with personal  
17 knowledge of the incident or the circumstances surrounding the  
18 incident shall disclose that information to the individuals  
19 conducting the investigation, except that information  
20 regarding a recipient of services shall be limited solely to  
21 identifying information as defined in Section 12.2 of this Act  
22 as well as ~~information relating to~~ the factual circumstances of  
23 the incident.

24 (Source: P.A. 86-1417.)

1 (740 ILCS 110/12.2) (from Ch. 91 1/2, par. 812.2)

2 Sec. 12.2. (a) When a recipient who has been judicially or  
3 involuntarily admitted, or is a forensic recipient admitted to  
4 a developmental disability or mental health facility, as  
5 defined in Section 1-107 or 1-114 of the Mental Health and  
6 Developmental Disabilities Code, is on an unauthorized absence  
7 or otherwise has left the the custody of the Department of  
8 Human Services facility without being discharged or being free  
9 to do so, the facility director shall immediately furnish and  
10 disclose to the appropriate local law enforcement agency  
11 identifying information, as defined in this Section, and all  
12 further information unrelated to the diagnosis, treatment or  
13 evaluation of the recipient's mental or physical health that  
14 would aid the law enforcement agency in recovering ~~locating and~~  
15 ~~apprehending~~ the recipient and returning him or her to custody  
16 ~~the facility~~. When a forensic recipient is on an unauthorized  
17 absence or otherwise has left the the custody of the Department  
18 ~~facility~~ without being discharged or being free to do so, the  
19 facility director, or designee, of a mental health facility or  
20 developmental facility operated by the Department shall also  
21 immediately notify, in like manner, the Department of State  
22 Police.

23 (b) If a law enforcement agency requests information from a  
24 developmental disability or mental health facility, as defined  
25 in Section 1-107 or 1-114 of the Mental Health and  
26 Developmental Disabilities Code, relating to a recipient who

1 has been admitted to the facility and for whom a missing person  
2 report has been filed with a law enforcement agency, the  
3 facility director shall, except in the case of a voluntary  
4 recipient wherein the recipient's permission in writing must  
5 first be obtained, furnish and disclose to the law enforcement  
6 agency identifying information as is necessary to confirm or  
7 deny whether that person is, or has been since the missing  
8 person report was filed, a resident of that facility. The  
9 facility director shall notify the law enforcement agency if  
10 the missing person is admitted after the request. Any person  
11 participating in good faith in the disclosure of information in  
12 accordance with this provision shall have immunity from any  
13 liability, civil, criminal, or otherwise, if the information is  
14 disclosed relying upon the representation of an officer of a  
15 law enforcement agency that a missing person report has been  
16 filed.

17 (c) Upon the request of a law enforcement agency in  
18 connection with the investigation of a particular felony or sex  
19 offense, when the investigation case file number is furnished  
20 by the law enforcement agency, a facility director shall  
21 immediately disclose to that law enforcement agency  
22 identifying information on any forensic recipient who is  
23 admitted to a developmental disability or mental health  
24 facility, as defined in Section 1-107 or 1-114 of the Mental  
25 Health and Developmental Disabilities Code, who was or may have  
26 been away from the facility at or about the time of the

1 commission of a particular felony or sex offense, and: (1)  
2 whose description, clothing, or both reasonably match the  
3 physical description of any person allegedly involved in that  
4 particular felony or sex offense; or (2) whose past modus  
5 operandi matches the modus operandi of that particular felony  
6 or sex offense.

7 (d) For the purposes of this Section and Section 12.1, "law  
8 enforcement agency" means an agency of the State or unit of  
9 local government that is vested by law or ordinance with the  
10 duty to maintain public order and to enforce criminal laws or  
11 ordinances, the Federal Bureau of Investigation, the Central  
12 Intelligence Agency, and the United States Secret Service.

13 (e) For the purpose of this Section, "identifying  
14 information" means the name, address, age, and a physical  
15 description, including clothing, of the recipient of services,  
16 the names and addresses of the recipient's nearest known  
17 relatives, where the recipient was known to have been during  
18 any past unauthorized absences from a facility, whether the  
19 recipient may be suicidal, and the condition of the recipient's  
20 physical health as it relates to exposure to the weather.  
21 Except as provided in Section 11, in no case shall the facility  
22 director disclose to the law enforcement agency any information  
23 relating to the diagnosis, treatment, or evaluation of the  
24 recipient's mental or physical health, unless the disclosure is  
25 deemed necessary by the facility director to insure the safety  
26 of the investigating officers or general public.

1           (f) For the purpose of this Section, "forensic recipient"  
2 means a recipient who is placed in a developmental disability  
3 facility or mental health facility, as defined in Section 1-107  
4 or 1-114 of the Mental Health and Developmental Disabilities  
5 Code, pursuant to Article 104 of the Code of Criminal Procedure  
6 of 1963 or Sections 3-8-5, 3-10-5 or 5-2-4 of the Unified Code  
7 of Corrections.

8           (Source: P.A. 98-756, eff. 7-16-14.)

9           Section 99. Effective date. This Act takes effect upon  
10 becoming law.